D.B. CIVIL WRIT PETITION NO.1858/2004
(M/s. Vividh Marbles Pvt. Ltd. Vs. Asstt. Com. & Anr.)

Date of order : 13.11.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. P.S. Bhati, for the petitioner.
Mr. Vineet Kumar Mathur, for the respondents.

Heard learned counsel for the parties.

The dispute relates to levy and collection of Excise Duty and penalty in respect thereof in manufacturing of marble slabs. The Tribunal vide its order 25.7.2001 has confirmed the demand on the Excise Duty chargeable on the aforesaid activity of cutting of marble blocks into marble slabs and also penalty under Section 11AC of the Central Excise Act for removing goods without payment of Duty.

Part of the demand so created was paid by the assessee.

However, the Supreme Court vide its judgment rendered in Aman Marbles case, reported in 2003 (58) ELT 595 held that cutting of marble blocks into marble slabs and tiles does not amount to manufacturing activity at all and levy of duty is ultra vires. Immediately on coming to know about this judgment,

which was rendered in 2003 itself, the petitioner surrendered his registration under the Excise Act and claimed refund of duty already paid thereafter. When the application for refund was rejected and notice was issued for recovering of remaining amount of penalty and interest thereon, this writ petition has been filed.

Broadly, the controversy raised in this case, is covered by decision of this Court rendered in DB Civil Writ Petition No.2246/2004 (M/s. Saraswati Marbles & Granite Industries Pvt. Ltd. Vs. UOI & Ors.) on 24.8.2006 in which under like circumstances, the order of adjudication and levy of penalty has been quashed by holding that since there was no authority under which the tax can be levied and collected on activity of cutting of Marble Blocks into Marble Slabs and Slabs into tiles, and both the parties were labouring under the mistake that activity of cutting of marble blocks into marble slabs and tiles amounts to manufacturing activity, inviting operation of Central Excise Act, Duty and penalty has been levied. The Court has directed not to recover the amount which was not authorized by law .

Consequently following the aforesaid decision dated 24.8.2006 rendered by this Court in DB Civil Writ Petition No.2246/2004 (supra), this writ petition is also allowed. The orders adjudicating demand of

Excise Duty and levy of penalty for non-payment of such Duty are quashed. In the circumstances, the recovery of any outstanding sum of Duty, interest and Penalty against the assessee as a result of the impugned levy orders and demand notices cannot be made and the respondents are restrained from doing so. So far as the amount already recovered from the assessee will be subject to provision under Section 11-B of the Act for which the assessee may resort to proceedings under Section 11-B. No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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